
UTAH LABOR COMMISSION

INDUSTRIAL ACCIDENTS DIVISION,

Petitioner,

vs.

RECREATION UTAH, L.L.C.,

Respondent.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 10482303236

Recreation Utah, L.L.C. asks the Utah Labor Commission to review Administrative Law Judge Lima's assessment of penalty against Recreation Utah pursuant to §34A-2-211(2) of the Utah Workers' Compensation Act.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated §63-46b-12, §34A-2-211(4)(c), and §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On October 12, 2004, the Industrial Accidents Division assessed a penalty of \$1,284.60 against Recreation Utah. The Division imposed this penalty pursuant to §34A-2-211(2) of the Utah Workers' Compensation Act on the grounds that Recreation Utah had failed to provide workers' compensation coverage for five employees during the period between April 1 and May 30, 2004.

Recreation Utah challenged the Division's penalty assessment. Judge Lima conducted a formal evidentiary hearing in the matter on March 31, 2005, and then issued her decision on August 31, 2005. In summary, Judge Lima concluded that Recreation Utah had failed to maintain workers' compensation coverage during the period in question, but employed only two workers during that time. Judge Lima therefore recomputed the penalty and concluded that Recreation Utah was liable for only the statutory minimum penalty of \$1,000.

Recreation Utah now asks the Commission to review Judge Lima's decision. Specifically, Recreation Utah asserts that the two individuals Judge Lima deemed to be Utah Recreation's employees were employed by other companies and received workers' compensation coverage through those companies.

FINDINGS OF FACT

The Commission adopts Judge Lima's findings of fact. As material to Recreation Utah's motion for review, those facts can be summarized as follows.

Russell Taylor owned United Team Mechanical and was the agent of Recreation Utah. Between April 1 and May 30, 2004, Kristy Bowles worked as a receptionist for United Team Mechanical and also answered Recreation Utah's business telephone. Similarly, Ann Gersdorf was employed by a company known as Jade II, but also provided accounting services for Recreation Utah. Recreation Utah did not carry workers' compensation insurance coverage during this period.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-201 of the Utah Workers' Compensation Act requires employers to maintain workers' compensation coverage for their employees. The Utah Supreme Court has noted that "[t]his section imposes an unconditional obligation on employers to be properly insured." *Thomas A. Paulsen Co. v. Industrial Commission*, 770 P.2d 125 (Utah 1989). Furthermore, it is well-established that a single employee can have more than one employer. As explained by Professor Larson, *Larson's Workers' Compensation Law*, § 68.02, "Joint and Dual Employment":

Joint employment occurs when a single employee, under contract with two employers, and under the simultaneous control of both, simultaneously performs services for both employers, and when the service for each employer is the same as, or is closely related to, that for the other. In such a case, both employers are liable for workmen's compensation Joint employment is possible, and indeed fairly common, because there is nothing unusual about the coinciding of both control by two employers and the advancement of the interests of two employers in a single piece of work.

Utah Recreation's motion for review raises only one point—that Ms. Bowles and Ms. Gersdorf were covered by other companies' workers' compensation insurance. However, the undisputed facts establish that Ms. Bowles and Ms. Gersdorf were jointly employed by Utah Recreation and these other companies. Consequently, even if the other joint employers did obtain workers' compensation insurance, that fact does not excuse Utah Recreation from its own "unconditional obligation to be properly insured." *Thomas A. Paulsen Co. supra*. And, because Utah Recreation did not obtain the necessary insurance, it is subject to the penalty established by §34A-2-211(2) of the Act.

ORDER

The Labor Commission hereby affirms Judge Lima's decision. It is so ordered.

Dated this 3rd day of May, 2007.

Sherrie Hayashi
Utah Labor Commissioner